

RECORDATION NO. 10648
Filed 1979

JUL 10 1979 - 9 45 AM

INTERSTATE COMMERCE COMMISSION

May 9, 1979

REGISTERED MAIL

3-201A011

Interstate Commerce Commission
12th and Constitution Avenue Northwest
Room 1227
Washington, D. C. 20423

Attention: Ms. Mildred Lee

Dear Ms. Lee:

Date JUL 20 1979

Fee \$ 50.00

ICC Washington, D. C.

Enclosed are six (6) original counterparts of a security agreement covering railway equipment which you are hereby requested to record, pursuant to 49 CFR Part 1116, under the name of Henry D. Wilde, Jr. Also enclosed is a check in the amount of \$50.00 to pay the recordation fee. The original documents when filed should be returned to:

Mark C. Evans
Bracewell & Patterson
2900 South Tower Pennzoil Place
Houston, Texas 77002

(1) The name and address of the Mortgagee (Secured Party) is:

Fannin Bank
1020 Holcombe Boulevard
Houston, Texas 77030

(2) The name and address of the Mortgagor (Debtor) is:

Henry D. Wilde, Jr.
3600 Inverness
Houston, Texas 77019

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FEE OPERATION BR.

Counterparts -

(3) The property covered by such security agreement includes railway equipment described as follows:

Four (4) 5,344-cubic-foot capacity, 70-ton truck, 50'6" XM general purpose unequipped boxcars, having A.A.R. Mechanical Designation XM and having serial numbers VTR 13148, VTR 13149, VTR 13150 and VTR 13152, each of which boxcars is marked as follows:

"REX RAILWAYS, INC., AGENT FOR OWNER & LESSOR, PURSUANT TO A LEASE RECORDED UNDER SECTION 20c OF INTERSTATE COMMERCE ACT. TITLE TO THIS CAR SUBJECT TO DOCUMENTS RECORDED UNDER SAID SECTION 20c"

If you have any questions regarding this matter, or if you need further information, please call Mark C. Evans at (713) 223-2900.

Very truly yours,

FANNIN BANK

By


Senior Vice President

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INTERSTATE COMMERCE COMMISSION

SECURITY AGREEMENT

Section I. Collateral and Obligations.

To secure the performance and payment of all obligations and indebtedness of the undersigned ("Borrower") or of any of the undersigned, if more than one, to Fannin Bank ("Bank"), 1020 Holcombe Boulevard, Houston, Harris County, Texas, of whatever kind or however created or incurred, whether incurred directly or acquired from third parties, whether acquired as collateral, by participation or otherwise, whether evidenced by promissory notes, guaranty or other agreements or otherwise and whether now or hereafter existing, including the indebtedness evidenced by Borrower's promissory note of even date herewith payable to the order of Bank in the principal amount of \$173,350.00, Borrower hereby grants to Bank a security interest in the property hereinafter described, and all increases, profits, substitutions, replacements, renewals, amendments, additions and accessions thereof, thereto or therefor (including any money, securities, rights to subscribe, liquidating dividends or other dividends, property or rights which Borrower may hereafter become entitled to receive on account of securities pledged hereunder) and the proceeds and products of such property, and all increases, profits, substitutions, replacements, renewals, amendments, additions and accessions of, to and for such proceeds and products (all of which is hereinafter collectively called "Collateral"):

- (1) Four (4) 5,344-cubic-foot capacity, 70-ton truck, 50'6" XM general purpose unequipped boxcars, having serial numbers VTR 13148, VTR 13149, VTR 13150 and VTR 13152 ("Boxcars");
- (2) All right, title and interest now owned or hereafter acquired by Borrower in and to that certain Management Agreement dated April 18, 1979, between REX Railways, Inc., a New Jersey corporation, and Henry D. Wilde, Jr. ("Boxcar Agreement"); and
- (3) All right, title and interest now owned or hereafter acquired by Borrower in and to any now or hereafter existing leases of the Boxcars.

Section II. Payment Obligations of Borrower.

Borrower shall pay to Bank when due any amount which may be due from Borrower to Bank. Borrower shall account fully and faithfully to Bank for all proceeds from disposition in the ordinary course of business of Collateral which is inventory and shall upon demand pay or turn over promptly in money, instruments, drafts, assigned accounts or chattel paper all proceeds from each such disposition to be applied to Borrower's indebtedness to Bank, subject, if other than cash, to final payment or collection.

Section III. Borrower's Representations, Warranties and Agreements.

Borrower represents, warrants and agrees that:

1. All information supplied and statements made to Bank in connection with any obligation or indebtedness hereby secured or by Borrower or any other person in any financial, credit, accounting or other statement or certificate or application for credit are and shall be true, correct, complete, valid and genuine. Borrower shall keep accurate and complete records of the Collateral, shall give Bank or its representatives access to such records at all times and shall provide such other information concerning the Borrower and the Collateral as the Bank may require. The address of Borrower's place of business, residence, chief executive office and office where Borrower keeps its records concerning its accounts, contract rights and general intangibles, is as set forth beside Borrower's signature to this Security Agreement. Borrower shall immediately notify Bank of any discontinuance of or change in such address, any change in the location of its place of business, residence, chief executive office or office where it keeps such records, and any change in its name. The Collateral will not be affixed to real estate or other goods so as to become fixtures or accessions. Attached hereto as Exhibit "A" is a true and correct copy of the Boxcar Agreement which is currently in full force and effect in the form set forth in such Exhibit. The Borrower will not permit to occur any amendment, other modification or termination of the Boxcar Agreement.

2. Except for the rights of present and future lessees of the Boxcars and documents filed in connection with any leases of the Boxcars, (i) no certificate of title, financing statement or other document showing any lien on or security or other interest in the Collateral except that of Bank is or will be outstanding or on file in any public office; and (ii) Borrower has good and marketable title to the Collateral, subject only to the security interest of Bank and subject to no other lien or security or other interest whatsoever. Borrower has full power and lawful authority to grant to Bank a security interest in the Collateral as herein provided, and Borrower will defend the Collateral against the claims and demands of all third persons other than such lessees. Borrower will take all necessary steps to preserve the liability of account debtors, obligors, and secondary parties whose obligations are a part of the Collateral.

3. Bank's duty with reference to the Collateral in Bank's possession shall be solely to use reasonable care in the physical preservation of such Collateral. Bank shall not be responsible in any way for any depreciation in the value of the Collateral, nor shall any duty or responsibility whatsoever rest upon Bank to take necessary steps to preserve rights against prior parties. Protest and all demands and notices of any action taken by Bank under this Security Agreement, or in connection with any Collateral, except as otherwise provided in this Security Agreement, are hereby waived, and any indulgence of Bank, substitution for, exchange or release of any person liable on the Collateral

is hereby assented and consented to. Bank may inspect at any time the Collateral and Borrower's books and records pertaining to the Collateral. Borrower shall assist Bank in making any such inspection. The Collateral shall not be removed from the United States unless all necessary actions have first been taken to perfect and protect the interest of the Bank in the Collateral in the jurisdictions in which the Collateral may become located. The Collateral will not be misused, wasted or allowed to deteriorate, except for the ordinary wear and tear in connection with its intended primary use, and will not be used in violation of any statute or ordinance. Without notice or demand from Bank, Borrower agrees to transfer possession of all money, instruments, documents and chattel paper which are Collateral, other than proceeds from the disposition of Collateral which is inventory, to Bank immediately, or, as to those hereafter acquired, immediately following acquisition.

4. Borrower will maintain insurance on inventory and equipment which is Collateral in an amount at least equal to the value of such inventory and equipment. Borrower agrees that policies evidencing any such property insurance shall, at all times after MAY 9, 1979, contain a standard mortgagee's endorsement providing for payment of any loss to Bank. Borrower agrees to use their best efforts to obtain a provision in each such policy to the effect that the insurer shall use its best efforts to notify the Bank in writing at least ten days prior to any cancellation of such policy. Borrower shall furnish Bank with certificates or other evidence of compliance with the foregoing insurance provisions. Bank may act as attorney for Borrower in obtaining, adjusting, settling and cancelling such insurance and endorsing any draft drawn by any insurer of the Collateral. Bank may apply any proceeds of such insurance which may be received by it in payment on account of the obligations secured hereby, whether due or not. If any insurance required hereby expires, is cancelled or is otherwise not in full force and effect, at Bank's option, Bank may obtain replacement insurance which may, but need not, be single interest insurance in favor of Bank. Bank may pay the premiums thereunder and add the amount of such premiums to the indebtedness secured hereby. Borrower agrees to reimburse Bank on demand for any amounts so paid, plus interest thereon at the maximum rate permitted by law.

5. Except for leases from time to time of the Boxcars, the Collateral will not be sold, leased or otherwise transferred or disposed of by Borrower or be subjected to any unpaid past due charge, including taxes, or to any subsequent interest of a third person created or suffered by Borrower voluntarily or involuntarily. Borrower will do, make, procure, execute and deliver all acts, things, writings and assurances as Bank may at any time request to protect, assure or enforce its interest, rights and remedies created by or arising in connection with this Security Agreement, including, without limitation, the execution of financing statements, applications for certificates of title or other documents. Without notice or demand from Bank, Borrower agrees to deliver to Bank all certificates of title pertaining to Collateral as to which a certificate of title has been or may be issued. If Bank should at any time be of the opinion that the Collateral is not sufficient or has declined or may decline in value or should Bank for any reason deem itself to be insecure, then Bank may call for additional security satisfactory to Bank, and Borrower promises to furnish such additional security forthwith.

6. The execution, delivery and performance of this Security Agreement and all other instruments and agreements executed by Borrower are within Borrower's power and authority, are not in contravention of law or any agreement or undertaking to which Borrower is a party or by which Borrower is bound.

7. Borrower agrees that in performing any act under this Security Agreement and any note, guaranty agreement or other obligations secured hereby, time shall be of the essence and Bank's acceptance of partial or delinquent payments, or failure of Bank to exercise any rights or remedy, shall not be a waiver of any obligation of Borrower or right of Bank or constitute a waiver of any other similar default subsequently occurring.

8. If the Collateral includes or constitutes inventory, then until the occurrence of an Event of Default, Borrower may use such inventory in any lawful manner not inconsistent with this Security Agreement and with the terms of insurance thereon and may lease such inventory in the ordinary course of business. Borrower shall not be permitted to use any item of inventory in a manner inconsistent with the holding thereof for lease in the ordinary course of business or in contravention of the terms of any agreement. A lease in the ordinary course of business does not include the exchange of inventory for goods in kind without receipt of additional consideration or transfers made in satisfaction of indebtedness.

Section IV. Rights of Bank.

1. Bank may, in its discretion, before or after default: (i) notify any account debtor or obligors on instruments to make payments directly to Bank; (ii) contact account debtors or obligors on instruments directly to verify information furnished by Borrower; (iii) transfer or register any of the Collateral in the name of Bank or its nominee and, whether or not so transferred or registered, exercise any or all voting rights appertaining to any of the Collateral, and receive any income, property, rights or dividends on account thereof, including cash and stock dividends, liquidating dividends and rights to subscribe; (iv) take control of proceeds and use cash proceeds to reduce any part of the obligations secured hereby, in such order as it elects, whether or not due and payable; (v) bring any action at law or in equity to protect its interest in the Collateral or to obtain damages for or to prevent deterioration or destruction of the Collateral other than ordinary wear and tear in connection with its intended primary use; and (vi) make demand for payment of, file suit on, make any compromise or settlement with respect to, collect, compromise, endorse or otherwise deal with the Collateral in its own name or the name of the Borrower.

2. At its option, Bank may make payments to discharge taxes, liens or security interests or other encumbrances at any time levied or placed on the Collateral and take any other action necessary to obtain, preserve, and enforce the security interest and the rights and remedies granted in this Security Agreement and maintain and preserve the Collateral. Such payments and any other expenses incurred by Bank in taking such action shall become part of the indebtedness secured by this Security Agreement. Borrower agrees to reimburse Bank on demand for any such payments made or expenses incurred by Bank, plus interest thereon at the maximum rate permitted by law.

3. Upon the occurrence of an Event of Default, and at any time thereafter, Bank may declare all obligations secured hereby immediately due and payable and shall have the rights and remedies of a secured party under the Uniform Commercial Code of Texas including the right to sell, lease or otherwise dispose of any or all of the Collateral in any manner allowed by such Uniform Commercial Code. Subject to the rights of any lessees of any Collateral, Bank may require Borrower to assemble the Collateral and make it available to Bank at a place to be designated which is reasonably convenient for both parties and shall have the right to take possession, with or without prior notice to Borrower, of all or any part of the Collateral or any security therefor and of all books, records, papers and documents of Borrower or in Borrower's possession or control relating to the Collateral, and Bank may enter upon any premises upon which any of the Collateral or any security therefor or any of such books, records, papers or documents are situated and remove the same therefrom without any liability for trespass or damages thereby occasioned. Unless the Collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, Bank will send Borrower reasonable notice of the time and place of any public sale or other disposition thereof or of the time after which any private sale or other disposition thereof is to be made. The requirement of sending reasonable notice shall be met if such notice is deposited in the U.S. Mail, postage prepaid, addressed to Borrower at the address listed at the end of this Security Agreement at least five (5) days before the time of the sale or disposition. Borrower shall be liable for all expenses, including without limitation, reasonable attorneys' fees and court costs, actually incurred by Bank in repossessing, storing, preparing for sale, lease or other disposition, or selling, leasing or otherwise disposing of the Collateral. The Collateral may be sold, leased or otherwise disposed of as an entirety or in such parcels as Bank may elect, and it shall not be necessary for Bank to have actual possession of the Collateral or to have it present when the sale, lease or other disposition is made. Bank may deliver to the purchasers or transferees of the Collateral a Bill of Sale or Transfer, binding Borrower forever to warrant and defend title to such Collateral. Borrower shall remain liable for any deficiency.

4. Bank may remedy any default and may waive any default without waiving the requirement that the default be remedied and without waiving any other default. The remedies of Bank are cumulative, and the exercise or partial exercise of any one or more of the remedies provided for herein shall not be construed as a waiver of any of the other remedies of Bank. No delay of Bank in exercising any power or right shall operate as a waiver thereof.

5. This Security Agreement, Bank's rights hereunder or the indebtedness hereby secured may be assigned from time to time, and in any such case the assignee shall be entitled to all of the rights, privileges and remedies granted in this Security Agreement to Bank.

6. Bank may execute, sign, endorse, transfer or deliver in its own name or in the name of Borrower, notes, checks, drafts or other instruments for the payment of money and receipts, certificates of origin, applications for certificates of title or any other documents necessary to evidence, perfect or realize upon the security interest and obligations created by this Security Agreement.

Section V. Events of Default.

Borrower shall be in default under this Security Agreement upon the happening of any of the following events or conditions (herein called an "Event of Default"):

1. Failure of Borrower or any endorser, guarantor, surety, accommodation party or other person liable upon or for payment of any indebtedness or obligation secured by this Security Agreement (each hereinafter called an "Other Liable Party") to pay punctually when due any indebtedness due to Bank or to perform punctually any other obligation, covenant, term or provision contained in or referred to in this Security Agreement, any notes or other agreement secured hereby or any other agreement executed in connection with this Security Agreement or any note secured thereby;

2. Any warranty, representation or statement contained in this Security Agreement or made or furnished to Bank by or on behalf of Borrower or any Other Liable Party proves to have been false in any respect when made or furnished;

3. Except as specifically authorized herein, any loss, theft, substantial damage, destruction or sale or other disposition of or to any of the Collateral occurs or the Collateral is subjected to any lien or encumbrance including, without limitation, any storage, artisan's, mechanic's or landlord's lien or any levy, seizure or attachment;

4. Death, dissolution, termination of existence, solvency or business failure of Borrower or any Other Liable Party occurs, or a receiver of all or any part of the property of Borrower or any Other Liable Party is appointed or an assignment is made for the benefit of the creditors of Borrower or any Other Liable Party or a meeting of creditors for Borrower or any Other Liable Party is called or any proceeding under any bankruptcy or insolvency laws by or against Borrower or any Other Liable Party is commenced;

5. Any event occurs which results in the acceleration of the maturity of the indebtedness of Borrower or any Other Liable Party to others under any indenture, agreement or undertaking;

6. The Collateral becomes, in the sole judgment of Bank, unsatisfactory or insufficient in character or value; or

7. Any event occurs which causes Bank to believe that the prospect of payment of any indebtedness or obligation secured hereby or the performance of this Security Agreement is impaired.

Section VI. Additional Agreements.

1. The term "Borrower" as used in this Security Agreement shall be construed as the singular or plural to correspond with the number of persons executing this instrument as Borrower. "Bank" and "Borrower" as used in this Security Agreement include the heirs, executors or administrators, successors, representatives, receivers, trustees and assigns of those parties. If more than one person executes this Security Agreement as Borrower, their obligations under this Security Agreement shall be joint and

several. Unless the context otherwise requires, terms used in this Security Agreement which are defined in the Uniform Commercial Code of Texas are used with the meanings as therein defined. The division of this Security Agreement into sections and subsections has been made for convenience only and shall be given no substantive meaning or significance whatever in construing the terms and provisions of this Security Agreement. The law governing this secured transaction shall be that of the State of Texas.

2. If any provision of this Security Agreement is rendered or declared invalid, illegal or ineffective by reason of any existing or subsequently enacted legislation or by decree of a court of competent jurisdiction, such legislation or decree shall not impair, invalidate or nullify the remainder of the Security Agreement which shall remain in full force and effect.

3. Any notice or demand to Borrower hereunder or in connection herewith may be given and shall conclusively be deemed and considered to have been given and received upon the deposit thereof, in writing, duly stamped and addressed to Borrower at the address set forth on the reverse hereof, in the U.S. Mail; but actual notice, however given or received, shall always be effective. Notwithstanding anything contained in this Security Agreement to the contrary, nothing contained in this Security Agreement or any other document executed in connection herewith shall be construed as impairing or limiting the right of Bank to demand at any time payment in full of any indebtedness secured hereby which is due and payable on demand.

EXECUTED this 9 day of May, 1979.


HENRY D. WILDE, JR.

ADDRESS:

3660 Inverness
Houston, Texas 77019

THE STATE OF TEXAS §
COUNTY OF HARRIS § ss:

On this 9 day of May, 1979, before me personally appeared Henry D. Wilde, Jr., to me known to be the person described in and who executed the foregoing instrument, and he acknowledged that he executed the same as his free act and deed.

(SEAL)

Dorothy Dexter
Notary Public in and for
Harris County, Texas

My commission expires:

7-22-79

IT IS UNLAWFUL TO CONSUMMATE A SALE OR TRANSFER OF THIS SECURITY, OR ANY INTEREST THEREIN, OR TO RECEIVE ANY CONSIDERATION THEREFOR, WITHOUT THE PRIOR WRITTEN CONSENT OF THE ADMINISTRATOR OF THE SECURITIES LAWS OF THE STATE HAVING JURISDICTION OVER SUCH SALE OR TRANSFER, EXCEPT AS PERMITTED IN THE APPLICABLE RULES OF SUCH ADMINISTRATOR.

MANAGEMENT AGREEMENT

THIS AGREEMENT made by and between REX Railways, Inc., a New Jersey corporation (hereinafter called "REX"), and the person executing this Agreement as owner (hereinafter called "Owner").

WHEREAS, Owner has, pursuant to a Boxcar Purchase Contract (the "Purchase Contract") with Rex, purchased the boxcars identified in Exhibit A attached hereto and incorporated herein by reference (such boxcar or boxcars purchased by Owner being hereinafter referred to as the "Cars");

WHEREAS, Owner may elect to finance a portion of the purchase price for the Cars from the proceeds of the borrowing identified or to be identified in Exhibit B attached hereto and incorporated herein by reference (hereinafter referred to as the "Loan") from the institution (hereinafter referred to as the "Lender") identified or to be identified in said Exhibit B and repayable in the periodic payments of principal and interest identified in, and payable at the times and in the amounts referred to in, said Exhibit B (hereinafter referred to as "Debt Service");

WHEREAS, REX engages in the business of managing railcars for railcar owners, and Owner desires to retain Rex as agent for the purpose of managing the Cars on Owner's behalf, collecting amounts due to or on behalf of Owner with respect to the Cars and disbursing funds of Owner to pay costs, expenses and obligations of Owner with respect to the Cars, all on the terms and conditions set forth herein;

WHEREAS, REX intends to manage 50 to 500 boxcars identical in all material respects to the Cars and to perform for the owners thereof, under management agreements substantially identical to this Agreement, services substantially identical to those which REX will perform for Owner hereunder, and Owner desires that the Gross Revenues (as hereinafter defined) and the Operating Expenses (as hereinafter defined) attributable to the Cars be accounted for and combined with the Gross Revenues and Operating Expenses (the "Pool") of all cars managed by REX under the Boxcar Management Program, 1979-C (the "Management Program"), all on the terms and conditions set forth herein; and

WHEREAS, the Cars, upon their acceptance by the lessee, will be subject to the Lease Agreement or Lease Agreements, as the case may be, to be identified unilaterally by REX in Exhibit B hereto (as so amended, the "Lease"), which Lease Agreement shall be the Lease Agreement dated May 24, 1978 and amended by amendments thereto dated June 5, 1978, July 6, 1978, July 7, 1978, September 21, 1978, and October 10, 1978 (covering 250 cars) between REX, as agent for lessor principal Owner, and Vermont Railway, Inc. (as the case may be, the "Lessee"), as lessee, and/or the Lease Agreement dated May 24, 1978 and amended by amendments thereto dated June 5, 1978, July 6, 1978, July 7, 1978 and September 21, 1978 (covering 250 cars) between REX, as agent for lessor principal Owner, and The Clarendon and Pittsford Railroad Company (as the case may be, the "Lessee"), as lessee, the Lease to which a Car is subject being identified by such Car's reporting mark (viz., Cars bearing a "VTR" reporting mark being subject to the Lease with Vermont Railway, Inc. and Cars bearing a "CLP" reporting mark being subject to the Lease with The Clarendon and Pittsford Railroad Company);

NOW, THEREFORE, in consideration of the mutual promises made herein, Owner and REX, intending to be legally bound, hereby agree as follows:

1. Engagement of REX.

Subject to all the terms and conditions set forth herein, Owner hereby engages REX as agent of Owner to manage the Cars, collect amounts due to or on behalf of Owner with respect to the Cars and

disburse funds of Owner to pay costs, expenses and obligations of Owner with respect to the Cars, all on the terms and conditions set forth herein, and REX accepts such engagement and agrees to act as agent for Owner and perform in accordance with the terms and conditions hereof.

2. Term.

(a) The term of this Agreement and the agency created hereby shall commence on the execution of this Agreement by both parties and shall continue for a period of ten years and three months following acceptance of the Cars by REX on behalf of Owner from the manufacturer; provided, however, that, except for Sections 10 and 11(a) and (c), which shall, notwithstanding this proviso, remain in effect with respect to any Car transferred as described in Section 11(a), this Agreement shall terminate with respect to any Car which is withdrawn pursuant to Section 12 hereof, sold, lost or totally destroyed as of the date that such withdrawal is effective, such sale is consummated, or such Car is lost or destroyed; provided further, however, that notwithstanding any termination of this Agreement, whether upon the expiration of ten years and three months after REX's acceptance of the Cars or upon the withdrawal, sale, loss or total destruction of any Car, REX shall continue to be obligated to collect all rental payments, car hire charges collectible by a person which is not a railroad and other sums (including insurance benefits or lessee or railroad indemnity payments payable in connection with any damage to or loss or total destruction of a Car), and to pay or arrange for payment of all expenses, taxes and other charges on Cars, due for or with respect to periods prior to such termination of this Agreement.

(b) At least six months prior to the expiration of the term of this Agreement on account of the passage of the period of ten years and three months after REX's acceptance of the Cars, but in no event more than 12 months prior to such expiration, REX shall deliver to Owner written notice of such pending expiration of this Agreement, which notice shall state whether or not REX proposes to negotiate a new agreement for the management of the Cars and, if REX does so propose, the terms of such new agreement which it proposes. In the event that REX does not enter into a new management agreement for the Cars (whether because it does not propose to enter into a new agreement or because the parties are unable to agree upon a new agreement), REX shall cooperate with Owner either to sell or otherwise dispose of the Cars or to effect an orderly transition of the management or use of the Cars to any new manager or any new lessee thereof, as the case may be (it being understood that any costs of constructive or physical redelivery of Cars to Owner will be borne by Owner).

3. Duties of REX.

In consideration of the compensation to be paid to REX by Owner pursuant to Section 6 hereof, and subject to the agreement of Owner to reimburse REX pursuant to Section 7 hereof, REX shall provide and perform the services on behalf of Owner set forth below during the term of this Agreement:

(a) Immediately upon execution of this Agreement, or as soon thereafter as reasonably practicable, take possession of the Cars as agent for Owner for the purpose of managing and operating the Cars, as herein provided.

(b) Use its best efforts to keep such Cars under lease for the term of this Agreement, entering into, as agent for Owner, lease agreements providing for the lease of the Cars to railroads, shippers or other financially responsible parties for that purpose on terms and conditions which are customary in the industry (including, without limitation, exercising its right to cause Lenawee County Railroad to put the Cars on such railroad's line bearing such railroad's reporting marks, if such arrangement appears, in REX's judgment, to be either the most effective method of re-marketing the Cars or the most effective short-term use of the Cars pending long-term re-marketing) and taking such steps as may be required to insure that all obligations and duties arising under such leases, whether of lessor or lessees, are performed or complied with in an orderly and timely fashion.

(c) In the event that the Cars are not leased to a railroad, use its best efforts to insure that all steps are taken which may be necessary to have the Cars registered and accepted by all hauling carriers under the Association of American Railroads ("AAR") as required by the terms of any lease or otherwise.

(d) Collect or cause to be collected all rental payments and car hire charges due with respect to the Cars, identifying itself as agent for that purpose, and account for and remit all sums due to Owner as hereinafter provided.

(e) Terminate leases and recover possession of Cars and enforce all rights of Owner with respect thereto, including the payment of all amounts owed under the leases or otherwise with respect to the Cars as shall be appropriate or necessary in the judgment of REX exercised in good faith; and institute and prosecute legal proceedings in the name of Owner as is permitted by applicable laws in order to terminate such leases and/or recover possession of the Cars; and, when expedient, settle, compromise and/or release such actions or suits or reinstate such leases.

(f) Review all maintenance and repair costs incurred or to be incurred by the Cars so that only necessary or appropriate maintenance or repair work at the proper charges therefor is performed and cause the Cars to be maintained in good condition, which shall be equal to or greater than the higher of (i) any standard required or set forth for the Cars or cars of a similar class by the AAR, Interstate Commerce Commission ("ICC") or U.S. Department of Transportation ("DOT"), (ii) any standard set by a lessee, whether by terms of a lease or by other understanding or agreement between lessee and REX, as agent for Owner, and (iii) any standard set by any insurance policy under which the Cars or any of them shall from time to time be insured, and to arrange for all alterations, modifications, improvements or additions to the Cars to comply with applicable laws or regulations; provided, however, that no alterations, modifications, improvements or additions of the type referred to in Section 7(d) shall be made without the consent of Owner, which consent will be deemed to have been granted if Owner shall not have objected thereto in writing within 30 days after notice to Owner thereof and of the estimated cost thereof.

(g) Use its best efforts to place in Owner's name such insurance as shall be reasonably available to protect the interest of Owner in the Cars (with REX, in its capacity as agent for Owner, being named in each such policy of insurance as a co-insured or additional insured), including, without limitation, insurance against (i) personal liability, including property damage and personal injury and (ii) loss of or damage to the Cars; provided, however, that if REX effects such insurance under a blanket insurance policy, or insurance policy covering Owner's Cars and other cars of other owners, such insurance need not be placed in Owner's name so long as Owner is named as an insured; and, provided further, however, that if REX determines that the cost of insurance described above is unreasonably high, or cannot be obtained, REX need not place or acquire such insurance and shall so notify Owner.

(h) Pay on behalf, and in the name, of Owner all personal property taxes and other taxes, charges, assessments, or levies imposed upon or against the Cars of whatever kind or nature and, in REX's discretion, defend against any such charges and seek revision of or appeal from any assessment or charge deemed improper, all such actions to be in the name of Owner.

(i) Monitor and record, and, in the case of Cars used on or off the line of a railroad lessee of the Cars, cause such lessee to monitor and record, movement of the Cars.

(j) Maintain, and, with respect to use of the Cars on or off the line of a railroad lessee of the Cars, cause such lessee to maintain complete and accurate records of all transactions relating to the Cars and make such records available for inspection by Owner or any of Owner's representatives (including REX, in the case of records maintained by a railroad lessee of the Cars) during reasonable business hours.

(k) Paint the Cars such colors and with such designs as REX may from time to time approve and place reporting marks or such other marks, legends, or placards on the Cars as shall be appropriate or necessary to comply with any regulation imposed by the ICC or the AAR.

(l) Provide Owner with advice and recommendations concerning the sale of the Cars.

(m) Use its best efforts to collect all sums due Owner, including, without limitation, insurance benefits or railroad or lessee indemnity payments, in the event of damage to, or loss or total destruction of, a Car during the term of this Agreement and to remit all sums due Owner as hereinafter provided.

(n) Furnish factual information reasonably requested by Owner in connection with Federal, State, Canadian Provincial and Mexican tax returns.

(o) If Owner has elected to finance a portion of the purchase price for the cars from the Loan and any "balloon payment" identified as such in Exhibit B hereto will be due prior to the expiration of the term of this Agreement and Owner shall have requested that REX assist in arranging refinancing for such payment, use its best efforts to arrange refinancing for such balloon payment on the Loan at or prior to the due date for such payment. REX shall commence its efforts to arrange refinancing for such balloon payment on the Loan at least six months prior to the due date for such payment. Neither REX nor any of its affiliates shall have any obligation to provide, guarantee or undertake any other liability with respect to the refinancing of such balloon payment.

(p) Provide such advice and perform such services incidental to the foregoing for the Owner as may from time to time be reasonably necessary in connection with the leasing and operation of the Cars.

4. Authority, and Limitations on Authority, of REX.

(a) It is recognized that REX will manage under the Management Program all the boxcars, including the Cars, purchased by investors thereunder pursuant to a management agreement substantially identical to this Agreement. It is recognized that REX will receive from owners of other cars in the Management Program compensation comparable to that payable by Owner hereunder. It is recognized and agreed that REX's services for and obligations to and rights with respect to Owner and the owners of other cars in the Management Program are several. Except as expressly provided in Section 4(b), REX will not act or purport to act for or in the name of the Pool, the Management Program or the owners of cars in the Management Program collectively or as an entity; it being expressly understood that any actions taken on behalf of the owners of cars in the Management Program will be taken as agent for such owners, severally and individually, either naming such owners or naming REX as agent for undisclosed several and individual principals. The parties hereto expressly recognize and acknowledge that this Agreement, the Management Program and the Pool are not intended to create a partnership, joint venture or other entity among Owner, other owners of cars in the Management Program and/or REX. REX shall not take any action or engage in any course of dealing which would suggest or create an inference that there is any understanding or agreement between owners of cars in the Management Program or that such owners are acting collectively or as an entity and REX shall use its best efforts to assure that no silence or failure to act on its part creates or sustains any such suggestion or inference.

(b) Notwithstanding the provisions of Section 4(a), Owner recognizes that the Internal Revenue Service (the "IRS") might assert that there exists among Owner and the other owners of cars in the Management Program and/or REX a partnership for Federal income tax purposes and that, pursuant to Section 6698 of the Internal Revenue Code of 1954, as amended (the "Code"), Owner and the other owners of cars in the Management Program might be liable for a penalty for failure to file a Federal information return with respect to the Management Program. REX is authorized to seek, at its discretion, a determination by the IRS whether pooling arrangements such as those embodied in the Management Program constitute partnerships for Federal income tax purposes and whether the election referred to in clause (i) below would be available if such pooling arrangements were determined to be such partnerships. Solely in order to avoid any such liability, until there shall have been an IRS or judicial determination whether pooling arrangements such as those embodied in the Management Program constitute partnerships for Federal income tax purposes, REX is authorized and directed either (i) in the event REX determines, either by an IRS ruling or an opinion of counsel, that the owners (including Owner) of cars in the Management Program are eligible to elect to be excluded from the application of subchapter K of the Code, to make such election or (ii) in the event that REX so determines that such election may not be made, to file a Federal information return on Form 1065 with respect to the operations of the Management Program and, solely for such purpose, Owner consents to being identified in such election or return as a "partner". For the purpose of making such election or preparing and filing such information return, Owner hereby constitutes and appoints REX as the agent and attorney-in-fact of Owner and, with the consent of the other owners of cars in the Management Program, of the Management Program for and on behalf of, and in the name, place and stead of the Management Program to prepare and sign as agent and attorney-in-fact and file such election or such Federal information returns for the Management Program, as the case may be. In furtherance of such designation of REX as agent and attorney-in-fact, Owner will, if REX shall so request, execute and deliver a Power of Attorney on Form 2848 and/or an Authorization and Declaration on Form 2848-D.

(c) REX shall not have any authority to (i) offer for sale, contract or agree to sell or sell any Cars except as Owner may from time to time hereafter expressly request or direct; (ii) extend, or permit the automatic extension of, the term of the Lease without the prior written consent of Owner; (iii) make any alterations, modifications, improvements or additions to the Cars of the type referred to in Section 7(d) without the consent (either express or inferred, as provided in Section 3(f)) of Owner or (iv) cause the Cars to be reclassified as XF boxcars without the consent of Owner (which consent may be express or will be deemed to have been granted if Owner shall not have objected in writing to such reclassification within 30 days after notice thereof to Owner).

5. Owner's Revenues, Expenses and Net Earnings.

(a) The actual Gross Revenues (as hereinafter defined) derived from the operation of the Cars and the actual Operating Expenses (as hereinafter defined) shall be accounted for and combined together with all Gross Revenues and Operating Expenses derived from and incurred by all cars managed under the Management Program.

(b) As used in this Agreement, the term "Gross Revenues" shall mean all income to Owner (unreduced by any expenses or costs) derived from the ownership, use and/or operation of the cars managed under the Management Program, including, but not limited to, rentals under leases and car hire charges payable or creditable to a person which is not a railroad. "Operating Expenses" shall mean all expenses and costs incurred in connection with the ownership, management, use and/or operation of cars managed under the Management Program including, but not limited to maintenance; repairs, except to the extent that the cost of such repairs is the responsibility of Owner under Section 7(f) of this Agreement or the agreements with other owners of cars managed under the Management Program; painting; costs of modifications and improvements which are not alterations, modifications, improvements or additions of the type described in Section 7(d) of this Agreement or the agreements with other owners of cars managed under the Management Program; accounting fees incurred pursuant to Section 13(d); legal fees incurred in connection with enforcing lease rights or repossessing Cars; insurance (and, if such insurance has been effected under a blanket insurance policy, or insurance policy covering cars in the Management Program and other cars of other owners, the portion of such insurance cost allocable to the cars in the Management Program, it being understood that REX will use its best efforts to allocate to cars in the Management Program only such portion of such insurance cost as is attributable to such cars); charges, assessments, or levies imposed upon or against cars in the Management Program of whatever kind or nature; losses from liabilities which are not the responsibility of Owner or other owners under Section 7(g) of this Agreement or the agreements with other owners of cars managed under the Management Program; and that portion of ad valorem, gross receipts and other property taxes which are determined by REX, or, in the event that cars in the Management Program are subject to a lease or leases and bear the reporting marks of the lessee or lessees thereunder, such lessee or lessees, to be attributable to the cars in the Management Program (it being understood that it may not be possible to make an exact allocation of such taxes but that REX will use its best efforts, and will cause such lessee or lessees to use its or their best efforts, to allocate to the cars in the Management Program only such taxes as are attributable to such cars). Gross Revenues and/or Operating Expenses attributable to a calendar quarter which are received or paid after the date of payment for such quarter shall be included in subsequent quarterly distributions and accounted for as Gross Revenues or Operating Expenses of that subsequent quarter.

(c) Owner's Gross Revenues and Operating Expenses for any fiscal period shall be the product of (i) Gross Revenues derived from all cars managed under the Management Program or Operating Expenses incurred by or with respect to all cars managed under the Management Program, as the case may be, multiplied by (ii) a fraction the numerator of which is the product of the number of Cars multiplied by the number of days in such fiscal period that the Cars are managed under the Management Program and the denominator of which is the product of the total number of cars managed under the Management Program multiplied by the number of days in such fiscal period that such cars are managed under the Management Program. The number of cars (or Cars, as the case may be) managed under the Management Program shall be the number of cars actually managed under the Management Program from time to time during such fiscal period and if any cars are destroyed, lost, sold, disposed of or withdrawn from the Management

Program during such fiscal period, any computation under this Section 5(c) shall reflect such destruction, loss, sale, disposition or withdrawal; provided, however, that (x) notwithstanding that the owner of any cars managed under the Management Program shall have entered into a management agreement with REX, the cars owned by such owner (who may be Owner) shall not be considered to be managed under the Management Program until such cars shall first have been delivered to and accepted by the Lessee under the Lease and (y) there shall not be any adjustment of computations under this Section 5(c) on account of the temporary withdrawal from service of any car for repairs, maintenance or reconstruction.

(d) As used in this Agreement, the term "Net Earnings" shall mean the Gross Revenues attributable to the Cars less the sum of (i) the amount of the Operating Expenses attributable to the Cars; (ii) all compensation due and payable to REX under Section 6 not theretofore paid; (iii) such reserves as REX shall, in its sole discretion, have reasonably created to provide for the efficient administration of this Agreement, for payment of accrued expenses not yet due, for the management of the Cars, or for expenses relating to the Cars arising or payable after the termination or expiration of this Agreement; (iv) any amount due and payable from Owner pursuant to Section 7(c) and not theretofore paid; and (v) any storage and transit costs payable by Owner under paragraph 6 of the Purchase Contract and not theretofore reimbursed to REX pursuant to Section 7(i); provided, however, that in the case of Net Earnings distributed to Owner upon the expiration or termination of this Agreement, Net Earnings shall include any reserves previously excluded from Net Earnings pursuant to clause (iii) of this Section 5(d), to the extent such reserves are not applicable to expenses arising or payable after the expiration or termination of this Agreement.

6. Compensation.

As compensation to REX for the performance of services hereunder, Owner shall pay to REX the following amounts:

(a) *Management Fee to Rex.* Owner shall pay to REX a management fee equal to (i) \$65 per Car per month commencing with the day on which such Car becomes subject to this Agreement and ending with the day one year after the day on which such Car became subject to this Agreement and (ii) thereafter, until this Agreement has terminated, \$60 per month per each such Car. Such fee shall be payable monthly and shall be pro-rated on a daily basis whenever the calculation of such fee is based on a partial month or a rate in effect for only part of a month.

(b) *Refinancing Fee to Rex.* If, as provided in Section 3(o), REX shall have arranged refinancing of a balloon payment on the Loan and Owner shall have elected to accept such refinancing, Owner shall pay to REX a refinancing fee equal to 1% of the principal amount refinanced, one-quarter of which fee shall be payable on the closing of such refinancing, one-quarter on the same day of the third month following such closing, one-quarter on the same day of the sixth month following such closing and the final quarter on the same day of the ninth month following such closing.

7. Distribution to Owner of Net Earnings; Payment of Costs and Expenses.

(a) *Special Distributions of Net Earnings.* If Owner has financed a portion of the purchase price for the Cars from the Loan and Owner has requested that REX assist Owner in providing for timely payment of Debt Service, REX shall, not later than three full business days prior to the time that Debt Service for any month is due and payable, distribute to Owner, as hereinafter provided, the lesser of (i) REX's then best estimate of the Net Earnings attributable to the Cars for the next preceeding month ending not less than 15 days prior to the time REX shall be required to make such distribution hereunder and (ii) the Debt Service then to be due and payable. Such distribution shall be made by transfer to Lender (which transfer may be made by sending by regular first-class mail a check for the amount transferred), in the name of Owner, of the amount so distributed. If the amount distributed for the benefit of Owner pursuant to the first sentence of this Section 7(a) is less than the full amount of the Debt Service then to be due and payable, REX shall, not later than three full business days prior to the time that Debt Service for such month is due and payable, advise Owner in writing (which advice may be sent by first-class mail) of the existence and amount of such deficiency. Distributions pursuant to this Section 7(a) shall commence for

the month during which Owner shall request that such distributions be made (which request may be made by execution of the request form on the signature page of this Agreement or by written notice to REX) and, unless Owner shall have advised REX that distributions shall continue (notwithstanding any instructions from Owner to the contrary) until the Lender shall have advised REX that the Loan has been repaid in full, shall terminate after the distribution for the month during which, by written notice to REX, Owner shall request that no further such distributions be made.

(b) *Regular Distributions of Net Earnings.* Within thirty (30) days after the end of each calendar quarter, REX shall distribute to Owner the excess of (i) the Net Earnings attributable to the operation of the Cars during each quarter over (ii) the amount of Net Earnings, if any, for such quarter distributed for the benefit of Owner by REX pursuant to Section 7(a).

(c) *Payment of Operating Deficits.* Within ten (10) days of receipt of notice and demand from REX, Owner shall pay to REX the amount by which the sum of (i) Net Earnings for a calendar quarter, reduced by the Net Earnings, if any, for such quarter distributed for the benefit of Owner by REX pursuant to Section 7(a) and (ii) the remaining balance, if any, of the reserve referred to in Section 7(i), shall be less than zero.

(d) *Payment for Special Improvements.* The cost of any alterations, modifications, improvements or additions which are required by the AAR, ICC or DOT or other regulatory agency or are otherwise required to comply with applicable laws, regulations or requirements and are consented to by Owner shall be the sole responsibility of Owner. REX shall have the right to require Owner to pay the approximate cost thereof to REX, upon ten (10) days prior written notice. Upon completion, REX shall notify Owner of the exact amount of such costs, and in the event that Owner has already paid more than such cost, REX shall refund the difference to Owner. If the amount already paid by Owner is less than the exact amount of such costs, Owner shall promptly pay to REX the amount of such difference.

(e) *Payment for Additional Insurance.* If REX determines, as provided in Section 3(g) hereof, that the cost of insurance described therein is unreasonably high, or cannot be obtained, and Owner elects to purchase such insurance, the cost thereof shall be the sole responsibility of Owner. Within ten (10) days of receipt of notice and demand from REX, Owner shall pay to REX the cost of any such insurance placed or purchased by Owner through REX. Owner shall also pay to REX in the same manner the cost of any insurance against loss of revenues with respect to the Cars which Owner has elected to place or purchase through REX.

(f) *Payment For Certain Property Damage.* The cost of repair of damage to any Car (other than the costs of repairs which REX determines constitute maintenance of such Cars) is the sole responsibility of Owner. Any payments, including, without limitation, insurance benefits or railroad or lessee indemnity payments, received to cover the damage to such Car (but not to cover loss of rental payments) shall be solely for the account and benefit of Owner (and shall not be included within the term "Gross Revenues"). REX shall have the right to require Owner to pay to REX, upon ten (10) days prior written notice and demand therefor, the approximate cost of the repairs which are the responsibility of Owner or, at REX's election, such portion of such cost as REX believes will not be covered by any such payments which may be received by REX (as coinsured or additional insured, as provided in Section 3(g)) to cover the cost of such damage (it being understood that REX may apply to such cost of such repair any payments so received by REX to cover the cost of damage to such Car). Upon completion of such repairs and determination of the payments received by REX and applied to payment of the cost of such damage, REX shall notify Owner of the exact amount of such costs and payments, and in the event that Owner has already paid more than the amount of such costs not paid from such payments received and applied by REX to such repair, REX shall refund the difference to Owner. If the amount already paid by Owner is less than the amount of such costs not paid from such payments received and applied by REX to such repairs, Owner shall promptly pay to REX the amount of such difference. REX shall promptly remit to Owner any payments to cover such damage to such Car which are received by REX and not applied to payment of the cost of repair of such damage.

(g) *Payment of Uninsured Losses.* Losses from third party liability for bodily injury or property damage caused by any Car which are (i) not covered by insurance and (ii) are in excess of the amount of the deductible(s) under any liability insurance for bodily injury and property damage on the Car are the

sole responsibility of Owner. Within ten (10) days of receipt of notice and demand from REX, Owner shall pay to REX the amount of such liability.

(h) *Receipts and Payments as Acts of Owner; Obligations of Owner.* In collecting or receiving any Gross Revenues and in paying or disbursing any Operating Expenses Rex is acting solely as agent for Owner. The provisions of Sections 3, 5 and 7 of this Agreement shall not be understood to diminish or modify the rights of Owner to receive Gross Revenues or the obligation of Owner to pay Operating Expenses or Debt Service.

(i) *Reserve for Initial Operating Deficit.* In addition to the reserves retained pursuant to Section 5(d)(iii), REX shall retain out of the purchase price of the Cars, in accordance with paragraph 6 of the Purchase Contract, \$375 per Car (the "Initial Reserve") as a reserve for the payment of Operating Expenses expected to be incurred during the first four months of the term of this Agreement and prior to receipt of the related Gross Revenues. On or prior to October 31, 1979 REX shall determine the amount (the "Excess Reserve") of any balance remaining in the Initial Reserve. REX shall then reimburse itself out of any Excess Reserve for any storage and transit costs for the Cars to be borne by Owner pursuant to paragraph 6 of the Purchase Contract and remit the balance, if any, of any Excess Reserve to Owner. In the event that there is no Excess Reserve or such Excess Reserve is insufficient, the storage and transit costs for the Cars shall be reimbursed to REX pursuant to Section 5(d)(v) (and any operating deficits shall be paid to the extent, at the time, and in the manner provided in Sections 7(c) and 5(d)(iv)).

8. Indemnification.

Owner shall defend (if such defense is tendered to Owner), indemnify and hold REX harmless from and against any and all claims, actions, damages, expenses (including reasonable attorneys' fees), losses or liabilities incurred by or asserted against REX as a result of the use, operation, possession, control, maintenance, repair or storage of the Cars; provided, however, that Owner shall not defend, indemnify or hold REX harmless from and against, and REX shall not be exculpated from, any claim, action, damage, expense, loss or liability directly or indirectly caused by or arising from the gross negligence, bad faith, or willful misconduct of REX.

9. Exclusive Sales Agency.

During the term of this Agreement and for a period of three months thereafter, REX shall have the exclusive right to sell the Cars. Except in case of any sale or other disposition of a Car to REX or any of its affiliates (that is, any company, person or firm controlling, controlled by, or under common control with, REX) or upon or in connection with a foreclosure, loss or destruction of a Car, Owner shall pay to Rex upon the sale of a Car a sales commission equal to the sum of (i) 4% of the sale price and (ii) 20% of any sale proceeds in excess of the sum of (x) 50% of the total purchase price of the Car provided for in the first sentence of paragraph 6 of the Purchase Contract (but excluding therefrom the \$100 per Car provision for storage or transit costs contemplated by said paragraph 6 and the \$375 per Car reserve for operating deficits created pursuant to said paragraph 6 of the Purchase Contract) and (y) the amount determined in (i).

10. Subordination.

This Agreement and REX's authority and rights hereunder are (i) subject to the lien and security interest upon the Cars and revenues generated by the Cars held by any Lender to whom Owner has granted a security interest in the Cars and (ii) are subject and subordinate to the terms of any chattel mortgage, security agreement or other financing document given by Owner to the Lender providing for the Loan or such lien or security interest (any and all such agreements collectively being the "Finance Documents"); provided, however, that all such liens and security interests are subject to any lease entered into during the term of this Agreement (including any rights of the Lessee under the Lease) and to REX's right to collect Gross Revenues accruing during the term of this Agreement until such time as sums due REX hereunder as of the later of the date of default under the terms of any Finance Document or repossession of the Cars pursuant to any Finance Document are paid.

11. Dealings With Lessees.

(a) It is intended that leases of cars managed under the Management Program (including the Lease) will cover several or all of the cars so managed under the Management Program at any time. Unless the lessee of such cars shall be willing to pay rental to several lessors (and such lessee may decline, in its sole discretion, to pay rental to more than a single lessor), any purchaser, foreclosing mortgagee, donee or other transferee of any car subject to such lease (even though such car is not then managed under the Management Program) shall, until the expiration or termination of such lease, acknowledge REX as such purchaser's, foreclosing mortgagee's, donee's or other transferee's agent for the purpose of receiving rentals under such lease (which rentals REX shall remit, forthwith upon receipt, without deduction or charge); provided, however, that any foreclosing mortgagee or transferee of such foreclosing mortgagee and REX shall select a person or entity, which may be REX, as agent of such foreclosing mortgagee or transferee of such foreclosing mortgagee for the purpose of receiving rentals under such lease.

(b) The cars in the Management Program will initially be leased to the Lessee under the Lease, which may be terminated as to one or more such cars upon the terms and conditions set forth in Sections 6C and 6D thereof. REX shall notify Owner of the occurrence of an event which permits such termination of the Lease with respect to one or more of the Cars within three days after such occurrence and shall advise Owner of its recommendations as to the exercise of such right of termination with respect to the Cars. Within 20 days after the giving of such notice by REX, Owner shall notify REX of its determination whether or not to terminate the Lease with respect to one or more Cars, and REX, if Owner has elected to so terminate the Lease, shall effect such termination on behalf of Owner under the Lease; provided, however, that if other owners of cars in the Management Program and Owner elect to terminate the Lease pursuant to Section 6C thereof with respect to an aggregate number of such cars that is in excess of the number of such cars which may be withdrawn from the Lease pursuant to such Section, then REX, in its sole discretion, shall allocate such right of termination among such electing car owners (including Owner). Subject to the terms and conditions of this Agreement, REX, on behalf of Owner, shall exercise all other rights of the lessor of the Cars under the Lease without being required to seek or receive the consent of or instructions from Owner.

(c) In the event that REX determines, in its sole discretion, that any purchaser, foreclosing mortgagee, donee or other transferee of any car which is subject to the leases referred to in Section 11(a) and which is not managed under the Management Program is not capable of performing the duties and obligations of a lessor under such leases in accordance with the terms thereof, then REX may require the transfer to REX of all the right, title and interest under such leases of such purchaser, foreclosing mortgagee, donee or transferee, without recourse, withdraw the cars of such person from such leases and substitute thereunder cars identical to the cars so withdrawn.

12. Withdrawal in Case of Special Improvements.

In the event that any alterations, modifications, improvements or additions of the type referred to in Section 7(d) shall be required and Owner shall not have consented to the making thereof, Owner may terminate this Agreement and withdraw from participation in the Management Program. In the event that Owner shall not have consented to the making of any such alteration, modification, improvement or addition and shall not have terminated this Agreement, from and after the effective date of any law, regulation or requirement prohibiting, limiting or otherwise affecting the leasing, use, ownership, operation, or maintenance of railway boxcars, such as the Cars, which have not been so altered, modified, improved or added to, the Cars will be deemed to have been withdrawn from the Management Program and all costs associated therewith (including maintenance and storage costs) will be the sole responsibility of Owner and Owner shall receive only Gross Revenues and Net Earnings directly and actually derived from or attributed to the Cars.

13. Reports.

(a) Not later than 30 days after the end of each calendar quarter other than the fourth calendar quarter, REX will distribute to Owner an unaudited report showing, in reasonable detail, the Gross Revenues, Operating Expenses and Net Earnings for such quarter, including the computation and the allocation of any property taxes and the computation of Owner's pro rata share of any items. Such reports shall also show the amount of Net Earnings, if any, for such quarter distributed for the benefit of Owner pursuant to Section 7(a).

(b) Within 60 days after the close of each calendar year, REX will distribute to Owner a report showing for the fourth calendar quarter and such year (stated separately) the same information reported on the quarterly report distributed pursuant to Section 13(a).

(c) Not later than 60 days after the close of Owner's taxable year (which will be deemed to be the calendar year unless Owner shall otherwise notify REX in writing) REX will deliver to Owner a statement setting forth all information (including computation of depreciation and amortization deductions computed on the same or similar bases as those set forth in the analytic models contained in the memorandum of REX dated February 5, 1979 relating to the Management Program) necessary in connection with the preparation of Owner's Federal income tax returns.

(d) Within 90 days after the close of each calendar year REX will deliver to Owner a report of such independent certified public accountants as are then acting as accountants to REX and its affiliates, as to review (which review will not constitute, and is not intended to be equivalent to, an audit of the operation of the Cars) of the operations of the Management Program, the mathematical correctness of the computations made by REX in the allocation of Gross Revenues, Operating Expenses and Net Earnings and the conformity of the accounting procedures followed by REX to the obligations and duties of REX under this Agreement. Such accountants shall also prepare the Federal information return on Form 1065 with respect to the operations of the Management Program if, pursuant to Section 4(b), REX files such information return.

14. Books and Records; Bank Account; Communications with Third Parties.

(a) REX shall maintain books and records reflecting solely transactions arising from the operations of the cars managed under the Management Program, including, without limitation, the receipt of items constituting Gross Revenues, the incurrence, accrual and payment of items constituting Operating Expenses, the distribution of Net Earnings, receipt of payments for operating deficits from owners of such cars, and the payment of fees to REX pursuant to Section 6. Such books and records shall (i) reflect only the transactions arising from operations of the cars managed under the Management Program, (ii) be kept physically apart from any other books and records maintained by REX for whatever purpose, and (iii) be available to Owner upon Owner's request for examination during the normal business hours of REX. At the termination of the term of this Agreement REX shall furnish (i) one copy of each annual report previously delivered to Owner pursuant to Section 13(b) and (ii) one copy of such other books and records which (x) relate to the Cars and (y) REX maintains at the time of such termination in the normal course of its record keeping under this Section 14(a) to Owner within 30 days after Owner gives notice to REX requesting such materials, which notice shall be given within 30 days after such termination.

(b) Neither the receipt nor the disbursement (other than payments made by or on behalf of Owner or other owners of cars in the Management Program to REX, as compensation or reimbursement of REX's expenses hereunder, pursuant to the terms of this Agreement or the agreements with such other owners) of any amounts generated by the operation of the Cars and the other cars managed under the Management Program shall appear in the accounting records or financial statements of REX or any of its affiliates, and any assets of Owner and the other owners of cars in the Management Program shall not be treated by REX as assets of REX or any of its affiliates or appear in the accounting records or financial statements of REX or any of its affiliates.

(c) REX shall cause to be maintained in the name of Owner and the owners of the other cars managed under the Management Program a bank account (the "Management Program Account") into which REX shall deposit the funds received by it and generated by the operation of the Cars and the other cars managed under the Management Program, pending disbursement of such funds in accordance with this Agreement and the agreements for the management of the other cars managed under the Management Program. REX shall maintain the Management Program Account only at a bank which either (i) does not have regular banking relations with REX or any of its subsidiaries or its parent or (ii) agrees in writing that such account is not subject to a right of set-off or any other claim or lien arising from any relationship between such bank and (x) REX or any of its affiliates or (y) any owners of cars managed by REX otherwise than under the Management Program.

(d) In dealing with third parties in connection with the Cars and the other cars in the Management Program, REX shall designate itself as agent for Owner or owners of such other cars, as the case may be, in

papers directed to such third persons, including, without limitation, letters, invoices and drafts drawn on the Management Program Account.

15. Use of Cars.

REX shall use its best efforts to cause any railroad lessee of the Cars under a lease (including the Lease) pursuant to which the Cars are expected to be used off the line of such lessee to prevent the Cars from being used predominantly outside the United States within the meaning of Section 48(a)(2)(A) of the Internal Revenue Code, as amended, or any successor provision thereof, and the regulations thereunder. REX shall cause each lease for the Cars entered into, or arrangements for the use of the Cars made by, a railroad which expects to use the Cars on its own line or a person which is not a railroad to contain provisions regarding the identity of the lessees or sublessees of the Cars and the locations of use of the Cars so as to avoid recapture of any allowable investment tax credit claimed with respect to the Cars.

16. Notices.

Any notice required or permitted hereunder shall be in writing and shall be valid and sufficient if delivered personally or dispatched in any post office of the United States by registered or certified mail postage prepaid addressed to the other party as follows:

If to REX: Rex Railways, Inc.
616 Palisade Avenue
Englewood Cliffs, New Jersey 07632
Attn: Robert W. Gruber

If to Owner: To the address set forth on the signature page to this Agreement;

and any party may change such address by notice given to the other party in the manner set forth above.

17. Miscellaneous.

(a) *Governing Law.* This Agreement shall be governed by and construed under the laws of the State of New Jersey.

(b) *Counterparts.* This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

(c) *Headings.* Titles and headings of the Sections and Subsections of this Agreement are for the convenience of reference only and do not form a part of this Agreement and shall not in any way affect the interpretation hereof.

(d) *Amendment.* No explanation or information by either of the parties hereto shall alter or affect the meaning or interpretation of this Agreement and no modification or amendment to this Agreement shall be valid unless in writing and executed by both parties hereto.

(e) *Successors and Assigns.* The terms and conditions of this Agreement shall inure to the benefit of and be binding upon the respective successors and assigns of the parties hereto; provided, however, that no assignment hereof by Owner or transfer of any of the Owner's rights hereunder whether by operation of law or otherwise shall be valid and effective as against REX without the prior written consent of REX. REX hereby consents to Owner's assignment to the Lender of Owner's rights, interests, powers and benefits under this Agreement as collateral security for the Loan and the obligations of Owner under the Finance Documents referred to in Section 10.

(f) *Force Majeure.* Neither party hereto shall be deemed to be in breach or in violation of this Agreement if either is prevented from performing any of its obligations hereunder for any reason beyond its reasonable control, including and without limitation acts of God, riots, strikes, fires, storms, public disturbances, or any regulation of any federal, state or local government or any agency thereof.

(g) *Other Cars Owned or Managed by Rex.* It is expressly understood and agreed that nothing herein contained shall be construed to prevent or prohibit REX from providing the same or similar services to any person or organization not a party to this Agreement. In particular, REX shall be entitled to own and

operate for its own account identical cars not managed under the Management Program and/or to manage such cars under a similar management agreement with another owner, subject to the following conditions:

(i) in the event that railroad cars similar to or competitive with the Cars, but owned by REX, any of its affiliates or any officers or directors of REX or any of its affiliates, are available for leasing at the same time the Cars are so available, REX shall, subject to the needs of prospective lessees and all applicable regulations of the AAR, ICC and DOT, re-market the Cars before it re-markets any such similar or competitive railroad cars; and

(ii) in the event REX manages for persons who are not participating in the Management Program railroad cars similar to or competitive with the Cars and not owned by REX, any of its affiliates or any officers or directors of REX or any of its affiliates and the number of such railroad cars exceed the demand therefor, REX shall, subject to the business needs of prospective lessees and all applicable regulations of the AAR, ICC and DOT, generally re-market first those railroad cars (including the Cars) which have been off lease and available for the longest period of time.

(h) *Waiver.* The waiver of any breach of any term or condition hereof shall not be deemed a waiver of any other or subsequent breach, whether of like or different nature.

(i) *Severability.* If any term or provision of this Agreement or the performance thereof shall to any extent be invalid or unenforceable, such invalidity or unenforceability shall not affect or render invalid or unenforceable any other provision of this Agreement, and this Agreement shall be valid and enforced to the fullest extent permitted by law.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year set forth below.

REX RAILWAYS, INC.

By.....
(Authorized Signature)

OWNER:

Name HENRY D. WILDE JR.
(Please Print)

By Henry D. Wilde Jr.
(Signature)

Address 3600 INVERNESS
HOUSTON
TEXAS 77015

Dated: APRIL 18, 1979

REQUEST FORM PURSUANT TO SECTION 7(a):

Owner hereby requests REX to make the special distributions provided for in Section 7(a) of this Agreement.

By Henry D. Wilde Jr.
(Signature)

For Owner who is an individual:

STATE OF }
COUNTY OF } ss.:

On this day of , 1979, before me personally appeared
..... (name of signer of foregoing instrument), to me known to be the person described in
and who executed the foregoing instrument and he or she acknowledged that he or she executed the same
as his or her free act and deed.

[SEAL]

.....

My commission expires

For Owner which is a corporation:

STATE OF }
COUNTY OF } ss.:

On this day of , 1979, before me personally appeared
..... (name of signer of foregoing instrument), to me personally known, who being by me
duly sworn, says that he is the (title of office) of
..... (name of corporation), that the seal affixed to the foregoing
instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf
of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the
foregoing instrument was the free act and deed of said corporation.

[SEAL]

.....

My commission expires

STATE OF }
COUNTY OF } ss.:

On this day of , 1979, before me personally appeared
(name of signer of foregoing instrument), to me personally known, who being by me duly sworn, says that
he is the (title of office) of REX RAILWAYS, INC., that the seal affixed to the
foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed
on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the
execution of the foregoing instrument was the free act and deed.

[SEAL]

.....

My commission expires

EXHIBIT A

To the Management Agreement

Cars subject to the Management Agreement:

Number of Cars

4

Description of Cars

5,344 cubic •foot capacity, 70-ton
truck, 50'6" XM general purpose
unequipped boxcars

Reporting Marks
and Serial Numbers

Exhibit B to the Management Agreement

Borrowings, referred to in the Management Agreement, the proceeds of which have been applied to the purchase of Cars (to be completed by Owners who have requested special distributions of Net Earnings, provided for in Section 7(a), and/or who may request that REX assist in refinancing, as provided in Section 3(o)):

Lender (Name and Address): _____

Original Principal Amount of Loan: _____

Amount of Each Periodic Payment of Debt Service: _____

Periods With Respect to Which Debt Service is Payable
(e.g., monthly, quarterly): _____

Due Dates of Debt Service Payments (e.g., first day of
each month, last day of each quarter): _____

Person, Account No. and/or Other Address to Which
Payments of Debt Service Should be Sent: _____

Maturity of Loan: _____

Balloon Payment, If Any, Due Upon Maturity of the Loan: _____

Interstate Commerce Commission
Washington, D.C. 20423

7/23/79

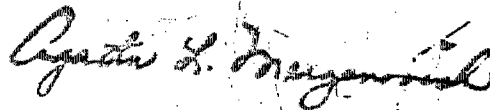
OFFICE OF THE SECRETARY

Mark C. Evans
Bracewell & Patterson
2900 South Tower Pennzoil Place
Houston, Texas 77002

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 7/20/79 at 9:45am, and assigned recordation number(s). 10648

Sincerely yours,



Secretary

Enclosure(s)

SE-30
(3/79)